The Supreme Court of the United States

October Term, 1971

No. 71–5656

Doris Philpott, et al., Petitioners

v.

Essex County Welfare Board

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF NEW JERSEY

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is filed in response to the Court's invitation to the Solicitor General to file a memorandum expressing the views of the United States.

QUESTION PRESENTED

Whether Section 207 of the Social Security Act, which prohibits attachment of social security payments, bars a State from attaching retroactively paid federal disability insurance benefits, when the attachment is made to recoup the portion of State disability benefits that had been paid in lieu of federal benefits during the period of retroactivity and is pursuant to beneficiary's agreement to reimburse the State.

In 1966, the State of New Jersey, acting through respondent, began payment of disability assistance benefits to petitioner Wilkes (Pet. 8). In order to obtain this assistance he was required by New Jersey law to execute an agreement to reimburse the State for the amount of assistance benefits received (*ibid.*). In 1968, Wilkes was awarded retroactive disability insurance benefits of $1864.20 under Section 223 of the Social Security Act, and a check for that amount was issued to him (Pet. 4). Petitioner Philpott, acting as trustee for Wilkes, deposited the check in a bank, and respondent brought suit to reach the bank account for reimbursement under the agreement to reimburse (*ibid.*). Petitioners asserted that Section 207 of the Social Security Act, which prohibits the attachment of social security benefit payments, barred recoupment from the fund created by the federal payment (*ibid.*).

The Supreme Court of New Jersey permitted the attachment on the grounds that (1) the State assistance payments had in part been made in lieu of federal disability insurance benefits, and (2) the fund attached was not needed for Wilkes' current support (A. 11). The court held, however, that the State could obtain only the amount by which its payments would have been reduced if Wilkes then had been receiving federal disability payments (A. 14).

DISCUSSION

1. Section 207 of the Social Security Act, 42 U.S.C. 407, provides that "none of the moneys paid or pay-

... or rights existing under this title shall be subject ... execution, levy, attachment, garnishment, or other ... process * * *." [1] The United States believes that ... unqualified prohibition of Section 207 should not ... subject to exceptions based on equitable considera... and therefore that the decision of the Supreme Court of New Jersey is erroneous. Section 207 is ... signed to assure that the full amount of disability ... paid will be available for the use of the bene... the decision of the Supreme Court of New Jersey to some extent weakens this protection.

... The issue, however, does not appear to be of ... importance to warrant review. The operation ... Section 207 has traditionally been noncontroversial ... there has been little litigation over its meaning in ... 35 years it has been on the books. There is no ... court decision dealing with an attachment of ... disability insurance payments.[2] Only two other state ... courts of last resort have considered the ambit of

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[1] There is a single exception to this sweeping exemption. Section 6331 of the Internal Revenue Code of 1954, 26 U.S.C. 6331, makes subject to levy for Federal tax liability "all property and rights to property" of the person liable for the tax. Section 6334 of the Code, 26 U.S.C. 6334, limits exemptions from the levy to seven specific categories and provides that no other property or rights to property shall be exempt "[n]otwithstanding any other law of the United States". Both the Treasury Department and the Department of Health, Education, and Welfare recognize, accordingly, that social security benefits may be subjected to levy under the foregoing sections.

[2] The scope of Section 207 was considered in *Beers* v. *Federal Security Administrator*, 172 F. 2d 34 (C.A. 2), and *Ewing* v. *Gardner*, 185 F. 2d 781 (C.A. 6), reversed on other grounds, 341 U.S. 321. However, these cases involved only the right of a beneficiary's estate to benefits not collected prior to death.

Section 207; neither of them deals with the pre
issue here. *Century Indemnity Co. v. Mead*, 121
434, 159 A. 2d 325, held that benefits could no
reached by a judgment creditor; *Ponath v. Ho*
22 Wis. 2d 382, 126 N.W. 2d 28, held that benefit
subject to support payments. The question of rec
ment, on which the decision below appears to
ruling of first impression, is not of current import

Moreover, the particular case involves a some
unusual factual situation. The equitable considerati
upon which the court below relied would not e
with respect to ordinary creditors or to payment
current benefits. The decision of the Supreme Cour
New Jersey thus will have limited scope even
respect to the attachability of disability ben
payments.

CONCLUSION

In this situation, it cannot be said that the case
of substantial current importance. Accordingly,
petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General

APRIL 1972.